

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Regulation of Prepaid Calling Card Services)	WC Docket No. 05-68
)	
)	

**REPLY OF AMERICAN PUBLIC COMMUNICATIONS COUNCIL TO
COMMENTS OF RNK INC.**

The American Public Communications Council ("APCC") files this reply to the October 12, 2006 comments ("RNK Comments") filed by RNK Inc. ("RNK") on the Petition for Clarification or, in the Alternative, for Reconsideration of IDT Telecom, Inc. (the "Petition"). In its own comments on the Petition, which seeks reconsideration or clarification of footnote 101 of the June 30, 2006 *Prepaid Card Order*,¹ APCC demonstrated that the Petition is without merit and should be denied.² RNK is the only party to comment in favor of the Petition, a fact which in and of itself confirms that the Petition is a solution in search of a problem.

¹ *Regulation of Prepaid Calling Services*, Declaratory Ruling and Report and Order, WC Docket No. 05-68, FCC 06-79 (June 30, 2006).

² See Comments of American Public Communications Council, WC Docket No. 05-68 (filed October 12, 2006).

DISCUSSION

I. The Commission Has Provided IDT and RNK with the Flexibility to Easily Address their Concerns Over the Effect on Consumers

A basic reason why the Petition should be denied is that to the extent that it raises an issue of any real concern—and it is impossible to know given the total lack of data provided by IDT and RNK—it is one that is entirely within their control to address. At the core of the Petition is IDT's request that the Commission exempt from compensation calls where: a payphone user calls a prepaid platform, is provided by the platform provider with balance information—rendering the call completed at the platform—but then does not call a third party.³ Both IDT and RNK profess concern over the effect that a compensation obligation for such calls has on consumers. As RNK says, if IDT's Petition is not granted, “[c]ustomers [will] be shocked to learn that every time they check their minutes or fail to place a call to a third party, whether due to interruption or failure to find the slip of paper the number written on it, they would incur a substantial charge.”⁴

³ As discussed in APCC's comments, APCC agrees with IDT and RNK that if a payphone user reaches the platform, is not provided with any information and then either abandons or does not complete a call to a third party, the call is not a completed call to the platform.

⁴ RNK Comments at 8. APCC notes that this formulation constitutes an admission by RNK that at least some of the calls are compensable. For calls where customers calls the platform with the express intent to “check their minutes,” presumably even RNK would concede that the platform is the called party, and the call is complete once the information sought by the caller is provided. Since Section 276 requires compensation for “each and every completed call,” the Commission is obligated to ensure compensation for this category of calls. That obligation in turn requires the Commission to retain its current rule requiring compensation once balance information is provided. Under the rule urged by IDT and RNK, where a caller calls the platform intending to make a third-party call, is provided with balance information, and then abandons the call, the prepaid platform provider would owe no compensation. Yet if that same caller intended only to get balance information, there would be no way to know that the call was compensable and distinguish it from the prior call where the caller abandoned a third-party call attempt. The bright line rule urged by RNK and IDT would deprive the PSP of compensation for the latter call in violation of the statute despite IDT's and RNK's acknowledgement the call is compensable. On the other hand, the Commission's current rule, as clarified in footnote 101, would correctly recognize that both calls are compensable, and thus is the only interpretation consistent with the Commission's absolute mandate under Section 276 to ensure compensation for “each and every” completed call.

What neither IDT nor RNK acknowledge, however, is that the situation only arises because of their own decisions about how to market their prepaid cards. IDT and RNK have *elected* to provide their callers with automatic balance information. Once that information is provided, a call to their platform becomes compensable, without the caller having to complete a separate call to a third party. In such instances, IDT and RNK have chosen to charge their customers for the information they have provided.

Contrary to their suggestion, however, it does not follow that once a call becomes compensable, IDT and RNK have no choice but to assess a surcharge on their customers. Nothing requires a prepaid card provider to assess a surcharge on any particular call or dictates the amount of that surcharge. Instead, prepaid card providers are completely free to choose whether and how to recover the costs they incur in meeting their compensation obligation. The Commission has given them complete flexibility to determine the manner in which they recover their costs of dial-around compensation, assuming that, given the chance, the acknowledged competitiveness of their market, prepaid calling card providers would adopt a variety of ways to recover their costs. Thus, for calls where balance information is provided but a third party call is not completed, RNK could opt to:

- assess the surcharge; or
- forego a surcharge and accept the lack of a surcharge on what—according to IDT—is likely a very limited number of calls as a cost of doing business; or
- forego a surcharge and spread the cost over its per-minute rates; or
- forego a surcharge and spread the cost over the surcharge assessed other callers.

RNK could also leave the option entirely up to the caller. Prior to providing the balance information, RNK could play a message informing the caller that the caller is about to be provided with balance information and will therefore incur a surcharge, giving the caller the option to hang up before the information is provided. Alternatively, the announcement could inform the caller that if the caller enters the PIN, there will be a payphone surcharge assessed.

Of course, this is not an exhaustive list of the options available to RNK. The point is that it is within RNK's discretion whether and how to surcharge. If RNK believes it would be "shocking" to its customers to pay a fee that compensates PSPs for the use of their payphone for the customer's benefit, RNK is free not to impose the charge.⁵ In fact, in a prepaid card market that, as the Commission has recognized, is highly competitive, this is exactly what would and should happen. With consumers highly rate-sensitive, the market can be expected to drive consumers away from carriers with what are perceived to be "shockingly" high rates.

By contrast of course, PSPs have no equivalent freedom to respond to the market. They are required to make their payphones available to any caller and for any call; cannot block calls to a particular carrier; and are entitled to only the FCC-mandated surcharge from carriers as compensation for the use of their equipment. As between a carrier who benefits, and enhances its market position, from the use of a payphone by providing useful account information to its customer in order to offer a more attractive product, and

⁵ RNK's argument in this regard is not aided by its claim that at one state requires prepaid card providers to provide balance information at the beginning of every call. *See* RNK Comments at 5 n.11. Again, just because RNK is obligated to provide account balance information does not mean that it is obligated to assess a surcharge. If it decides to do so, it must accept any customer reaction that it engenders as being of its own making.

the PSP who must make that payphone available for the call, Section 276 correctly mandates that the cost of the use of the payphone be borne by the carrier.

The ability of prepaid providers to shape their products as they see fit may explain why RNK is the only party to file in support of the Petition. Presumably, other prepaid card providers do not share IDT and RNK's concerns with the compensation rules either because they have shaped their product offerings differently so as not to create an issue, or have been able to develop appropriate mechanisms for the recovery of their costs.

Indeed, the issue does not appear to be a major one even for IDT and RNK. As APCC pointed out in its comments, the Petition contains absolutely no data concerning the number of calls in question, nor any information quantifying the alleged burden it faces. In fact, the *only* thing that IDT says about the scope of the issue is that it “may seem minor, given the frequency with which callers reach the platform without inputting all or part of a CPN”⁶—an admission that there really is no problem.

Similarly, RNK also complains of theoretical problems without providing any data. Nowhere does RNK quantify the harm that it imagines it will suffer if the Petition is not granted.

That the Petition and the only supporting comments both lack any facts supporting IDT's contention that a problem even exists, much less demonstrating that it is significant enough to warrant action, in and of itself necessitates dismissal of the Petition. This is all the more the case given the state of prepaid card provider noncompliance with the Commission's payphone compensation rules. As discussed in APCC's comments, hundreds of prepaid card providers have failed to pay the compensation they owe to

⁶ Petition at 6.

PSPs, costing independent PSPs literally millions of dollars. Against that backdrop, IDT and RNK should not be heard to complain about a phantom problem that, even if they were right, would by their own admission affect only a de minimis number of calls.

II. RNK and IDT Mis-Frame the Issue By Focusing on “Information Service” Calls Instead of on Completed Calls

RNK’s comments reflect the same basic misunderstanding of the Commission’s compensation rules that underlies IDT’s Petition. According to RNK, completed (and therefore compensable) calls are limited to those calls where either “a third party answers the call or where the calling party uses an information service”⁷ While RNK is certainly correct that any call answered by a third party is compensable, its formulation of the second category of compensable calls is too narrow. Information service calls constitute only a subset of the compensable calls to a platform where no third party is called. For example, if an end user calls a platform and reaches a live operator in order to recharge his or her card, that call is clearly compensable—and clearly not an “information services” call. As explained in APCC’s comments, a call is compensable if the platform provider elects to *dispense information* (making the platform the called party), regardless of whether the call is an *information service*. In other words, there can be “telecommunications services” calls to a platform, where information is provided, and those calls are compensable. The touchstone is whether the platform is functioning *only* as a platform—i.e. a launching pad for a subsequent call, or is itself the called party by the virtue of the fact that it provides information to the caller. Thus, as footnote 101 correctly reflects, if a prepaid customer reaches the platform and is provided with balance

⁷ RNK Comments at 3.

information, instead of merely using the platform to launch a call, the prepaid card provider has elected to complete the call and is obligated to compensate the payphone owner for the use of its payphone.

RNK contends that footnote 101 originally arose in the context of “a petition by AT&T seeking clarification of the Commission’s rules related to ‘menu-driven,’ or ‘enhanced’ prepaid calling cards.”⁸ In RNK’s view, it follows that footnote 101—and thus the compensation obligation—is limited to only information service calls. As APCC explained in its comments, however, while APCC’s request for clarification that gave immediate rise to footnote 101 was prompted by the Commission’s consideration of the menu-driven cards addressed by the *Prepaid Card Order*, nothing in that request or in its underlying logic—and nothing in the Commission’s ruling or its underlying logic—is limited to only that subset of prepaid cards. Rather, as discussed above, footnote 101 applies to any prepaid calling card call where the platform itself is the called party and the call is thus compensable once it *is completed at the platform*, without regard to whether a call is made to a third party called party. Such calls include calls where a caller “zeros out” to an operator to make a customer service or balance inquiry; and it also includes the calls at the core of the present dispute—where the caller enters a PIN and then is provided with balance information.

Thus, RNK’s argument that the provision of balance information is not an information service and instead is a “maintenance and management” function incidental to a telecommunications service,⁹ misses the mark. It doesn’t matter whether the function is an information service—what matters is that a caller used a payphone to call a

⁸ RNK Comments at 4.

⁹ *Id.* at 5-6.

platform, and was provided with information by that platform, rendering the call complete at the platform without regard to whether a call is subsequently dialed out to a called party. Just as calls to replenish a customer's card balance are plainly compensable, no matter how much of an incidental "maintenance and management" function they may be, so too are calls where balance information is provided.

III. Footnote 101 Is Not a Departure from Existing Commission Rules

In any case, RNK's focus on the scope of footnote 101 is misplaced. Footnote 101 merely reaffirmed in a specific context the existing rule that payphone calls are completed and thus compensable if they are answered by the called party. While both IDT and RNK characterize footnote 101 as a departure from the prior Commission rule, it is merely an articulation of the rule.

RNK says in several places that a completed call is a "call that is answered by the called party." That is completely correct; whether a call is answered by the called party has always been the touchstone used by the Commission for determining completion. The key notion that escapes RNK, however, is that a platform can be the called party, and is—and always has been—the called party when the platform dispenses information to the caller. Thus any suggestion by RNK that it is APCC that is seeking a reconsideration of existing rules is unfounded.¹⁰ It is IDT and RNK who are seeking a rule change.¹¹

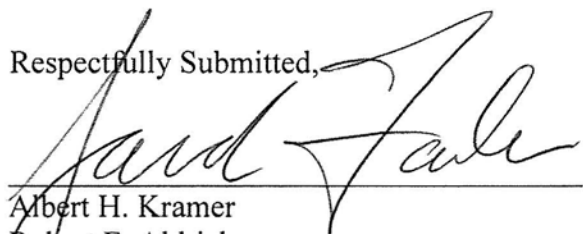
¹⁰ RNK's assertion that "the Commission expressly rejected APCC's request that it require completing carriers to report 'uncompleted calls' so PSPs could charge for such calls," RNK Comments at 6 n.15, is wildly off the mark. As a threshold matter, while APCC did ask the Commission to require intermediate carriers to report uncompleted calls, it *never* sought to charge for such calls. Rather, requiring intermediate carriers to report both completed and uncompleted calls would have given PSPs important information about the percentage of calls that are complete. In any case, that ruling had and has no bearing on the issue of when a call to a platform is a compensable call by virtue of the platform provider's decision to provide information to the caller.

¹¹ RNK points out that in the *Tollgate Reconsideration Order*, the Commission declined to issue a clarification that "calls answered by a carrier's platform" are compensable. RNK Comments at 7. From

CONCLUSION

For the reasons shown above, the Commission should deny IDT's Petition and affirm that compensation is required for all calls where a prepaid card platform provides information and thus the call is completed at the platform, including without limitation those calls where the prepaid card platform automatically provides balance or other account information.

Respectfully Submitted,



Albert H. Kramer
Robert F. Aldrich
Jacob S. Farber
Dickstein Shapiro LLP
1825 I Street, N.W.
Washington, DC 20036
Tel. (202) 420-2290
Fax (202) 420-2201

*Attorneys for the American Public Communications
Council*

Dated: October 23, 2006

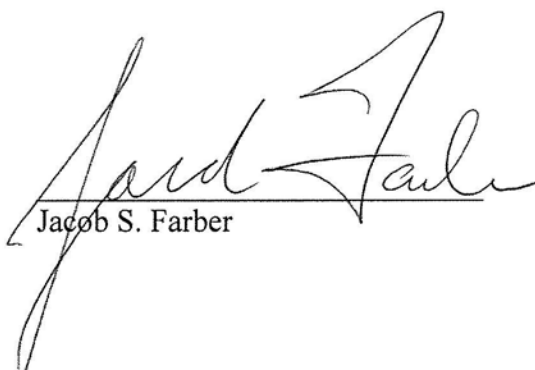
that fact, RNK concludes that (1) under the rules in effect prior to the *Prepaid Card Order*, calls completed to a platform were not compensable, and (2) the Commission could not have intended to reach beyond "information services" calls in footnote 101. RNK is wrong in both respects. First, even under RNK's overly narrow interpretation of what constitutes a completed call, there are calls to the platform that have always been clearly compensable—for example calls where the caller zeros out to a live operator for customer service. Second, the fact that the Commission was not willing to clarify its existing rules in the *Tollgate Reconsideration Order* in no way precluded it from doing so in the *Prepaid Card Order* and it in fact did so in footnote 101. While RNK disputes the scope of footnote 101, it cannot and does not dispute that it represents a clarification of the Commission's existing, as opposed to an articulation of new, rules.

CERTIFICATE OF SERVICE

I hereby certify that on October 23, 2006, I caused a copy of the foregoing Reply of American Public Communications Council to Comments of RNK Inc. to be served by e-mail and U.S. mail to the following:

Kathleen Greenan Ramsey
Wendy M. Creeden
SONNENSCHN NATH & ROSENTHAL LLP
1301 K Street, N.W.
Suite 600, East Tower
Washington, DC 20005
kramsey@sonnenschein.com
wcreeden@sonnenschein.com

Douglas Denny-Brown
Michael Tenore
Sharon Schawbel
Lynn Castano
RNK Inc. d/b/a/ RNK Telecom
333 Elm Street, Suite 310
Dedham, MA 02026


Jacob S. Farber